

AMENDED IN ASSEMBLY JUNE 16, 2005

AMENDED IN ASSEMBLY JUNE 7, 2005

AMENDED IN SENATE MARCH 29, 2005

## **SENATE BILL**

**No. 575**

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**Introduced by Senators Torlakson, Ducheny, and Dunn  
(Coauthor: Senator Alquist)**

(Coauthors: Assembly Members Jones and Lieber)

February 18, 2005

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An act to amend Section 65589.5 of the Government Code, relating to local planning.

### LEGISLATIVE COUNSEL'S DIGEST

SB 575, as amended, Torlakson. Housing development projects.

The Planning and Zoning Law requires that a local agency not disapprove a housing development project, including farmworker housing, for very low, low-, or moderate-income households or condition its approval, including through the use of design review standards, in a manner that renders the project infeasible for development for those households unless it makes written findings, based upon substantial evidence in the record, as to one of a number of specified conditions.

The Planning and Zoning Law also requires that in any action to enforce these provisions, if a court finds that the local agency disapproved the project or conditioned its approval without making the required findings or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment to compel compliance with these provisions within 60 days, including an award of reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development, and may issue

further orders to ensure that the purposes and policies of these provisions are fulfilled if its order or judgment has not been carried out within the 60-day period.

This bill would revise the conditions upon which a disapproval or a conditional approval of the housing development project is based.

The bill would expressly authorize the applicant for the development project or a resident to bring an action in court pursuant to specified provisions and would also authorize the court to vacate the decision of the local agency, as specified, deem the application complete, and impose fines pursuant to specified procedures if the court finds that the local agency acted in bad faith and failed to carry out the court's order or judgment within the 60-day period.

The bill would require that a court action pursuant to these provisions be given precedence and would specify procedures for appeal of the court's order.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 65589.5 of the Government Code is
- 2 amended to read:
- 3 65589.5. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The lack of housing is a critical problem that threatens the
- 6 economic, environmental, and social quality of life in California.
- 7 (2) California housing has become the most expensive in the
- 8 nation. The excessive cost of the state's housing supply is
- 9 partially caused by activities and policies of many local
- 10 governments that limit the approval of housing, increase the cost
- 11 of land for housing, and require that high fees and exactions be
- 12 paid by producers of housing.
- 13 (3) Among the consequences of those actions are
- 14 discrimination against low-income and minority households, lack
- 15 of housing to support employment growth, imbalance in jobs and
- 16 housing, reduced mobility, urban sprawl, excessive commuting,
- 17 and air quality deterioration.
- 18 (4) Many local governments do not give adequate attention to
- 19 the economic, environmental, and social costs of decisions that

1 result in disapproval of housing projects, reduction in density of  
2 housing projects, and excessive standards for housing projects.

3 (b) It is the policy of the state that a local government not  
4 reject or make infeasible housing developments that contribute to  
5 meeting the housing need determined pursuant to this article  
6 without a thorough analysis of the economic, social, and  
7 environmental effects of the action and without complying with  
8 subdivision (d).

9 (c) The Legislature also recognizes that premature and  
10 unnecessary development of agricultural lands for urban uses  
11 continues to have adverse effects on the availability of those  
12 lands for food and fiber production and on the economy of the  
13 state. Furthermore, it is the policy of the state that development  
14 should be guided away from prime agricultural lands; therefore,  
15 in implementing this section, local jurisdictions should  
16 encourage, to the maximum extent practicable, in filling existing  
17 urban areas.

18 (d) A local agency shall not disapprove a housing  
19 development project, including farmworker housing as defined in  
20 subdivision (d) of Section 50199.50 of the Health and Safety  
21 Code, for very low, low-, or moderate-income households or  
22 condition approval, including through the use of design review  
23 standards, in a manner that renders the project infeasible for  
24 development for the use of very low, low-, or moderate-income  
25 households unless it makes written findings, based upon  
26 substantial evidence in the record, as to one of the following:

27 (1) The jurisdiction has adopted a housing element pursuant to  
28 this article that has been revised in accordance with Section  
29 65588 ~~and~~, is in substantial compliance with this article, and the  
30 jurisdiction has met or exceeded its share of the regional housing  
31 need allocation pursuant to Section 65584 ~~for the respective~~  
32 ~~category of very low, low-, or moderate-income housing for the~~  
33 ~~planning period, as determined pursuant to this article, provided~~  
34 ~~that any the planning period for the income category proposed~~  
35 ~~for the housing development project, provided that any~~  
36 disapproval or conditional approval shall not be based on any of  
37 the reasons prohibited by Section 65008. If the housing  
38 development project ~~would meet a portion of the unmet housing~~  
39 ~~need in the very low, low-, or moderate-income category~~  
40 ~~includes a mix of income categories, and the jurisdiction has not~~

1 *met or exceeded its share of the regional housing need for one or*  
2 *more of those categories*, then this paragraph ~~may~~ shall not be  
3 used to disapprove *or conditionally approve* the project. The  
4 share of the regional housing need met by the jurisdiction shall  
5 be calculated consistently with the forms and definitions *that may*  
6 *be adopted* by the Department of Housing and Community  
7 Development pursuant to Section 65400. Any disapproval *or*  
8 *conditional approval* pursuant to this paragraph shall be  
9 ~~supported by the findings otherwise required by~~ *in accordance*  
10 *with* applicable law, rule, or standards.

11 (2) The development project as proposed would have a  
12 specific, adverse impact upon the public health or safety, and  
13 there is no feasible method to satisfactorily mitigate or avoid the  
14 specific adverse impact without rendering the development  
15 unaffordable to low- and moderate-income households. As used  
16 in this paragraph, a “specific, adverse impact” means a  
17 significant, quantifiable, direct, and unavoidable impact, based  
18 on objective, identified written public health or safety standards,  
19 policies, or conditions as they existed on the date the application  
20 was deemed complete. Inconsistency with the zoning ordinance  
21 or general plan land use designation shall not constitute a  
22 specific, adverse impact upon the public health or safety.

23 (3) The denial of the project or imposition of conditions is  
24 required in order to comply with specific state or federal law, and  
25 there is no feasible method to comply without rendering the  
26 development unaffordable to low- and moderate-income  
27 households.

28 (4) The development project is proposed on land zoned for  
29 agriculture or resource preservation that is surrounded on at least  
30 two sides by land being used for agricultural or resource  
31 preservation purposes, or which does not have adequate water or  
32 wastewater facilities to serve the project.

33 (5) The development project is inconsistent with both the  
34 jurisdiction’s zoning ordinance and general plan land use  
35 designation as specified in any element of the general plan as it  
36 existed on the date the application was deemed complete, and the  
37 jurisdiction has adopted a revised housing element in accordance  
38 with Section 65588 that is in substantial compliance with this  
39 article.

(A) This paragraph cannot be utilized to disapprove *or conditionally approve* a housing development project ~~defined in subdivision (a)~~ if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) ~~If the local agency has failed to identify in its housing element adequate sites with appropriate zoning and development standards and with services and facilities to accommodate its share of the regional housing need for the very low and low-income categories,, in accordance with Section 65583.2, to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph~~~~may~~ shall not be utilized to disapprove *or conditionally approve* a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California

1 Environmental Quality Act (Division 13 (commencing with  
2 Section 21000) of the Public Resources Code).

3 (f) Nothing in this section shall be construed to prohibit a local  
4 agency from requiring the development project to comply with  
5 objective, quantifiable, written development standards,  
6 conditions, and policies appropriate to, and consistent with,  
7 meeting the jurisdiction's share of the regional housing need  
8 pursuant to Section 65584. However, the development standards,  
9 conditions, and policies shall be applied to facilitate and  
10 accommodate development at the density permitted on the site  
11 and proposed by the development project. Nothing in this section  
12 shall be construed to prohibit a local agency from imposing fees  
13 and other exactions otherwise authorized by law that are essential  
14 to provide necessary public services and facilities to the  
15 development project.

16 (g) This section shall be applicable to charter cities because  
17 the Legislature finds that the lack of housing is a critical  
18 statewide problem.

19 (h) The following definitions apply for the purposes of this  
20 section:

21 (1) "Feasible" means capable of being accomplished in a  
22 successful manner within a reasonable period of time, taking into  
23 account economic, environmental, social, and technological  
24 factors.

25 (2) "Housing development project" means a use consisting of  
26 either of the following:

27 (A) Residential units only.

28 (B) Mixed-use developments consisting of residential and  
29 nonresidential uses in which nonresidential uses are limited to  
30 neighborhood commercial uses and to the first floor of buildings  
31 that are two or more stories. As used in this paragraph,  
32 "neighborhood commercial" means small-scale general or  
33 specialty stores that furnish goods and services primarily to  
34 residents of the neighborhood.

35 (3) "Housing for very low, low-, or moderate-income  
36 households" means that either (A) at least 20 percent of the total  
37 units shall be sold or rented to lower income households, as  
38 defined in Section 50079.5 of the Health and Safety Code, or (B)  
39 100 percent of the units shall be sold or rented to  
40 moderate-income households as defined in Section 50093 of the

Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) “Neighborhood” means a planning area commonly identified in a community’s planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(6) “Disapprove the development project” includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed

1 complete pursuant to Section 65943, that have a substantial  
2 adverse effect on the viability or affordability of a housing  
3 development for very low, low-, or moderate-income households,  
4 and the denial of the development or the imposition of  
5 restrictions on the development is the subject of a court action  
6 which challenges the denial, then the burden of proof shall be on  
7 the local legislative body to show that its decision is consistent  
8 with the findings as described in subdivision (d) and that the  
9 findings are supported by substantial evidence in the record.

10 (j) When a proposed housing development project complies  
11 with applicable, objective general plan and zoning standards and  
12 criteria, including design review standards, in effect at the time  
13 that the housing development project's application is determined  
14 to be complete, but the local agency proposes to disapprove the  
15 project or to approve it upon the condition that the project be  
16 developed at a lower density, the local agency shall base its  
17 decision regarding the proposed housing development project  
18 upon written findings supported by substantial evidence on the  
19 record that both of the following conditions exist:

20 (1) The housing development project would have a specific,  
21 adverse impact upon the public health or safety unless the project  
22 is disapproved or approved upon the condition that the project be  
23 developed at a lower density. As used in this paragraph, a  
24 "specific, adverse impact" means a significant, quantifiable,  
25 direct, and unavoidable impact, based on objective, identified  
26 written public health or safety standards, policies, or conditions  
27 as they existed on the date the application was deemed complete.

28 (2) There is no feasible method to satisfactorily mitigate or  
29 avoid the adverse impact identified pursuant to paragraph (1),  
30 other than the disapproval of the housing development project or  
31 the approval of the project upon the condition that it be  
32 developed at a lower density.

33 (k) The applicant or any resident of the local jurisdiction may  
34 bring an action to enforce this section. If in any action brought to  
35 enforce the provisions of this section, a court finds that the local  
36 agency disapproved a project or conditioned its approval in a  
37 manner rendering it infeasible for the development of housing for  
38 very low, low-, or moderate-income households, including  
39 farmworker housing, without making the findings required by  
40 this section or without making sufficient findings supported by



1 substantial evidence, the court shall issue an order or judgment  
2 compelling compliance with this section within 60 days,  
3 including, but not limited to, an order that the local agency take  
4 action on the development project. The court shall retain  
5 jurisdiction to ensure that its order or judgment is carried out and  
6 shall award reasonable attorney's fees and costs of suit to the  
7 plaintiff or petitioner who proposed the housing development,  
8 except under extraordinary circumstances in which the court  
9 finds that awarding fees would not further the purposes of this  
10 section. If the court determines that its order or judgment has not  
11 been carried out within 60 days, the court may issue further  
12 orders as provided by law to ensure that the purposes and policies  
13 of this section are fulfilled, including, but not limited to, an order  
14 to vacate the decision of the local agency, in which case the  
15 application for the project, as constituted at the time the local  
16 agency took the initial action determined to be in violation of this  
17 section, along with any standard conditions determined by the  
18 court to be generally imposed by the local agency on similar  
19 projects, shall be deemed approved unless the applicant consents  
20 to a different decision or action by the local agency.

21 (l) If the court finds that the local agency (1) acted in bad faith  
22 when it disapproved *or conditionally approved* the housing  
23 development in violation of this section and (2) failed to carry  
24 out the court's order or judgment within 60 days as described in  
25 paragraph (k), the court in addition to any other remedies  
26 provided by this section, may impose fines upon the local agency  
27 that the local agency shall be required to deposit into a housing  
28 trust fund. Fines shall not be paid from funds that are already  
29 dedicated for affordable housing, including, but not limited to,  
30 redevelopment or low- and moderate-income housing funds and  
31 federal HOME and CDBG funds. The local agency shall commit  
32 the money in the trust fund within five years for the sole purpose  
33 of financing newly constructed housing units affordable to  
34 extremely low, very low, or low-income households. For  
35 purposes of this section, "bad faith" shall mean an action that is  
36 frivolous or otherwise entirely without merit.

37 (m) Any action brought to enforce the provisions of this  
38 section, shall be brought pursuant to Section 1094.5 of the Code  
39 of Civil Procedure, and the local agency shall prepare and certify  
40 the record of proceedings in accordance with subdivision (c) of

1 Section 1094.6 of the Code of Civil Procedure no later than 30  
2 days after the petition is served, provided that the cost of  
3 preparation of the record shall be borne by the local agency. The  
4 action shall have precedence over all other civil actions and  
5 proceedings in the same manner and to the same extent as  
6 provided in subdivision (a) of Section 21167.1 of the Public  
7 Resources Code. Upon entry of the trial court's order ~~denying~~  
8 ~~relief~~, a party shall, in order to obtain appellate review of the  
9 order, file a petition within 20 days after service upon it of a  
10 written notice of the entry of the order, or within such further  
11 time not exceeding an additional 20 days as the trial court may  
12 for good cause allow. If the local agency appeals the judgment of  
13 the trial court, the local agency shall post a bond, in an amount to  
14 be determined by the court, to the benefit of the plaintiff if the  
15 plaintiff is the project applicant.

16 (n) In any action, the record of the proceedings before the  
17 local agency shall be filed as expeditiously as possible and,  
18 notwithstanding Section 1094.6 of the Code of Civil Procedure  
19 *or subdivision (m) of this section*, all or part of the record may be  
20 ~~filed~~ *prepared* (1) by the petitioner with the petition or  
21 petitioner's points and authorities, (2) by the respondent with  
22 respondent's points and authorities, (3) after payment of costs by  
23 the petitioner, or (4) as otherwise directed by the court. If the  
24 expense of preparing the record has been borne by the petitioner  
25 and the petitioner is the prevailing party, the expense shall be  
26 taxable as costs.